

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Petitioner,

v.

Cause No. 1:19-cr-01631-DHU

PRAGNESHJUMAR R. PATEL, a.k.a. "Pete Patel,"

Defendant.

and

**RIVERSTONE BANK, SUCCESSOR BY MERGER TO
FIRST STATE BANK,**

Third-Party Petitioner in Interest

**THIRD PARTY RIVERSTONE BANK'S MOTION TO DETERMINE
PRIORITY OF INTEREST IN PROPERTY**

COMES NOW Petitioner, Riverstone Bank, successor by merger to First State Bank of Colorado Springs, a Branch of First State Bank ("Petitioner," or "Lender"), by and through its attorneys, Giddens & Gatton Law, P.C. (Elizabeth V. Friedenstein), and for its Motion to Determine Priority of Interest in Property states:

1. This motion is brought pursuant to Fed. R. Crim. P. 32.(c)(2) and 21 U.S.C. § 853(n) to seek this court to adjudicate the validity of Petitioner's priority secured interest in the forfeited property.

2. Petitioner, Riverstone Bank has claimed a first lien position priority secured interest in the forfeited property.

3. Petitioner, Riverstone Bank is a Nebraska state bank. On November 5, 2021, the Secretary of State of the State of Nebraska certified that First State Bank, Scottsbluff, Nebraska

merged into Riverstone Bank. A true and correct copy of the certificate of merger is attached as Exhibit 8 to Riverstone's Petition.

4. On or about September 29, 2017, Saishivam Lodging, LLC, Pragneshjumer R. Patel (Defendant), and Rakshaben R. Patel executed and delivered to Petitioner's predecessor, First State Bank of Colorado Springs, a branch of First State Bank, a Promissory Note ("Note"), representing a loan from First State Bank to said Defendants in the principal sum of \$1,048,000.00, bearing interest at a variable rate. A true and correct copy of the Note is attached as Exhibit 1 to Riverstone's Petition and incorporated by reference herein.

5. Owner of the property, Saishivam Lodging, LLC secured the Note by entering into a Deed of Trust ("Deed of Trust") on the property, commonly known as 7640 Central Avenue SE, Albuquerque, NM 87108-2145 ("the Property"), on or about September 29, 2017. The Deed of Trust was recorded on September 29, 2017, as Document No. 2017094179, in the real property records of Bernalillo County, New Mexico. A true and correct copy of the Deed of Trust is attached as Exhibit 2 to Riverstone's Petition and is incorporated by reference herein.

6. Defendant Saishivam Lodging, LLC further secured the Note by entering into an Assignment of Rents ("Assignment of Rents"), on or about September 29, 2017. The Assignment of Rents was recorded On September 29, 2017, as Document No. 2017094180, in the real property records of Bernalillo County, New Mexico. A true and correct copy of the Assignment of Rents is attached as Exhibit 3 to Riverstone's Petition and is incorporated by reference herein.

7. On January 23, 2020, the Borrowers Saishivam Lodging, LLC, Pragneshjumer R. Patel, and Rakshaben R. Patel entered into a Change in Terms Agreement ("CITA 1"), acknowledging a principal amount of \$982,480.61. A true and correct copy of the CITA 1 is attached as Exhibit 4 to Riverstone's Petition and is incorporated by reference herein.

8. On April 27, 2020, the Borrowers Saishivam Lodging, LLC, Pragneshjumer R. Patel, and Rakshaben R. Patel entered into a Change in Terms Agreement (“CITA 2”), acknowledging a principal amount of \$974,273.04. A true and correct copy of the CITA 2 is attached as Exhibit 5 to Riverstone’s Petition and is incorporated by reference herein.

9. On July 22, 2020, the Borrowers Saishivam Lodging, LLC, Pragneshjumer R. Patel, and Rakshaben R. Patel entered into a Change in Terms Agreement (“CITA 3”), acknowledging a principal amount of \$974,273.04. A true and correct copy of the CITA 3 is attached as Exhibit 6 to Riverstone’s Petition and is incorporated by reference herein.

10. On December 2, 2020, the Borrowers Saishivam Lodging, LLC, Pragneshjumer R. Patel, and Rakshaben R. Patel entered into a Change in Terms Agreement (“CITA 4”), acknowledging a principal amount of \$964,446.43. A true and correct copy of the CITA 4 is attached as Exhibit 7 to Riverstone’s Petition and is incorporated by reference herein.

11. On January 22, 2024, Rakshaben Patel filed a Petition for Hearing based on her alleged ownership of the property. Ms. Patel’s interest is in relation to her ownership interest in Saishivam Lodging, LLC, the current owner of the subject property. Saishivam Lodging, LLC, and Ms. Patel’s junior and subject to Riverstone’s lien senior priority interest.

12. The Petitioner currently has possession of the original Note and is the proper party to enforce the Note, pursuant to Section 55-3-205, NMSA 1978.

13. The Borrowers have defaulted under the terms of the Note.

14. The United States District Court for the District of New Mexico has included a forfeiture allegation concerning the criminal allegations filed against Pragneshkumar R. Patel at Case No. 19- CR-01631. This forfeiture order includes, but is not limited to, the real estate described in the Deed of Trust and rents in the Assignment of Rents securing the Note.

15. Since Borrowers are in Default, Petitioner is within its rights to accelerate the amount owed and demand payment in full. As such, Petitioner provided notice of acceleration and demanded payment by letter to Borrowers on December 23, 2022. True and correct copies of the Notice of Default and Notice of Demand are attached as Exhibit 9 to Riverstone's Petition, dated December 23, 2022. The Notice of Default is incorporated by reference herein.

16. Petitioner in good faith believes itself insecure.

17. Borrowers have failed to pay the accelerated Note, however, the tenants have maintained monthly payments under the Note to Petitioner.

18. Pursuant to the Note, Deed of Trust, and Assignments of Rent, the Petitioner is entitled to an award of attorneys' fees, legal expenses incurred in connection with the enforcement of its rights, and post-judgment attorneys' fees and collection costs.

19. Petitioner filed an action against Defendant and borrowers in the State of New Mexico, County of Bernalillo, Second Judicial District Court, as case no. D-202-CV-2023-00237. Since the filing of the action, the court has placed a stay on the action pending the determination of this Court as to Petitioner's interest in the property and the sale of the property. Petitioner is seeking that court to release the stay and allow Petitioner to proceed with that action.

20. The United States of America by and through the Department of Justice, claims an interest in the Property subject to the Plaintiff's Deed of trust, by virtue of a Notice of Lis Pendens of the forfeiture action, recorded in the office of the Bernalillo County Clerk on June 24, 2019, as Document No. 2019052388. Such interest is junior to the Plaintiff's Deed of Trust.

21. Upon information and belief, Saishivam Lodging LLC, a New Mexico limited liability company and Riana Hospitality, LLC, a New Mexico limited liability company, entered into a Lease/Purchase Agreement on February 1, 2020, and thereby Riana Hospitality, LLC may

claim an interest in the property. The Lease/Purchase Agreement has not been recorded in the real property records of Bernalillo County, New Mexico. Such interest, if any, is junior to the Petitioner's Deed of Trust.

22. Petitioner's Deed of Trust on the Property is valid, and is prior and paramount to the interests of the United States of America, Saishivam Lodging, LLC, Pragneshjumer R. Patel, Rakshaben R. Patel, and all other Petitioners that may come forward, and Petitioner is entitled to judgment validating its interest in the property and its priority to receive payment of the amounts owing to it from the proceeds of the sale of the property.

23. As of June 13, 2024, Saishivam Lodging, LLC, Pragneshjumer R. Patel (Defendant), and Rakshaben R. Patel are jointly and severally indebted to Petitioner for the following amounts:

Principal Balance	\$854,806.07
Default Interest to of 18% through 6/13/2024	\$2,374.46
Late charges	\$0.00
Escrow balance	(\$3,672.12)
Total Amounts owed through 6/13/2024	\$860,852.65

The default interest accrues on a daily interest rate of 18% totaling \$237.4461 per day.

WHEREFORE, Petitioner prays for judgment as follows pursuant to this Complaint:

A. As against the interests of the Petitioner:

- a. That the sums prayed for and alleged to be secured by the Property are determined secured and that the Deed of Trust is a valid first lien on the real property described therein, and on the rents, issues, and profits of said real property, if they exist, and all buildings and improvements thereon and fixtures attached thereto;
- b. That the Deed of Trust be declared and adjudged to be a valid first lien, prior and paramount to any right, title, interest, lien, equity, or estate of the Defendant and any other Petitioner;
- c. That if the proceeds of the sale do not satisfy Petitioner's interest in full, Petitioner will have a deficiency judgment against the Saishivam Lodging, LLC, Pragneshjumer R. Patel, and Rakshaben R. Patel, jointly and severally, for the deficiency;
- d. For its costs incurred herein;
- e. For its attorneys' fees, pursuant to the Note, Deed of Trust, and Assignment of Rents;
- f. For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

Giddens & Gatton Law, P.C.

/s/ Elizabeth V. Friedenstein

Elizabeth V. Friedenstein

Submitted Electronically

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*Attorneys for Third-Party Petitioner in Interest,
Riverstone Bank*

CERTIFICATE OF SERVICE

I certify that on the 13th day of June 2024, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties or counsel requesting notice to be served by electronic means on the date of filing.

/s/ Elizabeth V. Friedenstein, 6.13.24